

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOLID 21, INC.,

Plaintiff,

-against-

RICHEMONT NORTH AMERICA, INC.,
RICHEMONT INTERNATIONAL S.A., and
MONTBLANC-SIMPLO GMBH,

Defendants.

19-cv-1262 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

On October 31, 2022, Plaintiff moved to exclude Defendants’ survey expert, Mark Keegan. *See* ECF No. 190. Plaintiff argues that Mr. Keegan’s testimony is not relevant to any claim or defense in this case. In its opposition, Defendants stated that Mr. Keegan’s survey would be used “to gauge the extent to which consumers recognize ‘red gold’ as a brand in certain of Defendants’ advertisements and the extent to which the term ‘red gold’ contributes to a consumer’s purchasing decisions with respect to Defendants’ watches.” ECF No. 201 at 2.

No later than **September 8, 2023, at 5PM,** Defendants are hereby ORDERED to file on ECF a letter, not to exceed three (3) pages, addressing the following questions:

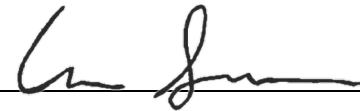
1. How does Mr. Keegan’s Brand Identification Module—which asked respondents only to identify “brands” in an advertisement—help gauge the extent to which the term “red gold” contributes to a consumer’s purchasing decisions? How are Mr. Keegan’s Brand Identification findings otherwise relevant to an apportionment of profits in this case? Furnish authorities supporting the use, for purposes of apportioning profits, of a survey asking respondents to identify brands in advertisements.

2. How does Mr. Keegan's analysis, including the Brand Identification findings, "bear[] on fair use." ECF No. 201 at 4. Again, furnish authorities supporting the use of Mr. Keegan's brand analysis for purposes of Defendants' fair use defense.

If Plaintiff wishes to respond to Defendants' submission, it may do so with a letter of up to three (3) pages no later than **September 11, 2023, at 5PM.**

SO ORDERED.

Dated: September 6, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'Arun Subramanian', is written over a horizontal line.

ARUN SUBRAMANIAN
United States District Judge